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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Daniel G. Wing

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EXAMINER

NGUYEN, BRIAN D

ART UNIT

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2616

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/797,689	<b>Applicant(s)</b> WING, DANIEL G.	
	<b>Examiner</b> BRIAN D. NGUYEN	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 10-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 21-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. During a telephone conversation with Stephen S. Ford on 5/20/08, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9 and 21-38.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Objections***

2. Claims 21-29 are objected to because of the following informalities:

Claim 21, line 3, it is suggested to replace "the same priority" with --a same priority--.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-9 and 21-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The added limitation: "same priority value" is not described in the specification.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-7, 9, 21-27, 29-36, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selvaggi et al (2004/0193709).

Regarding claim 1, Selvaggi discloses a method for analyzing a media path in a packet switched network, comprising: varying a Time To Live (TTL) value in media trace packets to intentionally cause faults at intermediate nodes in the media path; and analyzing fault notices received from the intermediate nodes in the media path caused by the media trace packets (paragraph 0051). Selvaggi does not specifically disclose assigning a same priority value for media trace packet and actual media payload packet. However, to assign the same priority to two different packets is a matter of choice because if two different packets having the same quality of service should be assigned the same priority value. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to assign the same priority value to two different packets that have the same quality of service in order to ensure the equal treatment of the two packets in the network.

Regarding claim 2, Selvaggi discloses formatting the media trace packets as a Real Time Protocol (RTP) payload packet that travel along the same media path as RTP payload packets containing media content (paragraph 0051)

Regarding claim 3, Selvaggi discloses conducting a media signaling protocol that establishes the media path between a source and destination endpoint; using a same media header format for the media trace packets and media payload packets; and setting a first set of TTL values in the media trace packets to a low enough value to cause a fault condition in one of the intermediate nodes in the media path such that a portion of each media trace packet causing the fault condition is returned in a corresponding reject notice to the source endpoint (Fig. 5; paragraphs 0009, 0050 and 0051).

Regarding claim 4, Selvaggi discloses setting a second set of TTL values so that at least some of the media trace packets reach the destination endpoint causing the destination endpoint (paragraph 0051).

Regarding claim 5, Selvaggi discloses setting a member bit in the media trace packets that cause the destination endpoint to generate a media path analysis report for the media trace packets (paragraph 0051).

Regarding claim 6, Selvaggi discloses using a Real Time Control 10 Protocol (RTCP) report for the media path analysis report (paragraph 0051).

Regarding claim 7, Selvaggi discloses determining whether or not to transmit a media stream over the media path according to contents of the media path analysis report (paragraphs 0009 and 0012).

Regarding claim 9, Selvaggi discloses setting a first TTL value in a first set of the media trace packets that cause a first intermediate node in the media path to reject the first set of media trace packets and send back a first rejection notice; and setting a second larger TTL value in a second set of media trace packets that allow the first intermediate node to forward the second set

Art Unit: 2616

of media trace packets while causing a second intermediate node in the media path to reject the second set of media trace packets and send back a second rejection notice (paragraph 0051).

Regarding claims 21-27 and 29, claims 21-27 and 29 are system claims that have substantially the same limitations as the respective method claims 1-7 and 9. Therefore, they are subject to the same rejection.

Regarding claims 30-36 and 38, claims 30-36 and 38 are computer readable medium claims that have substantially the same limitations as the respective method claims 1-7 and 9. Therefore, they are subject to the same rejection.

7. Claims 8, 28, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selvaggi in view of Alberth et al (2004/0125965).

Regarding claims 8, 28, and 37, Selvaggi does not specifically disclose causing the media trace packets to play out low volume noise when received by a destination endpoint by inserting the low volume noise into payload fields of the media trace packet before sending the media trace packets along the media path. However, inserting the noise into packet and sending the packet over a network is well known in the art. Alberth discloses this feature (see paragraph 0002). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to insert the comfort noise for playing out at the destination as taught by Alberth in the system of Selvaggi in order to avoid annoying the listener.

### ***Response to Arguments***

Art Unit: 2616

8. Applicant's arguments with respect to claims 1-9 and 21-38 have been considered but are moot in view of the new ground(s) of rejection. Note that page 5, lines 11-12 does not describe "a same priority value".

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN D. NGUYEN whose telephone number is (571)272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on (571) 272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

5/20/08

/Brian D Nguyen/

Primary Examiner, Art Unit 2616